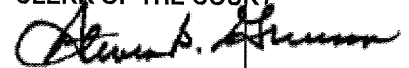


## **EXHIBIT “A”**

## **EXHIBIT “A”**

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Steven D. Grierson  
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**COMP**  
ALLEN A. CAP, ESQ.  
Nevada Bar No. 188  
CAP & KUDLER  
3202 W. Charleston Boulevard  
Las Vegas, Nevada 89102  
(702) 878-8778  
*Attorney for Plaintiff*

CASE NO: A-21-841568-C  
Department 31

DISTRICT COURT  
CLARK COUNTY, NEVADA

OSCAR POLIDORO,  
Plaintiff,

CASE NO.:  
DEPT. NO:

vs.

SMITH'S FOOD & DRUG CENTERS,  
INC., a foreign corporation; and DOES I-V  
and ROE CORPORATIONS I-V,

Defendants.

**COMPLAINT**

**JURISDICTIONAL STATEMENT**

This court has jurisdiction over this matter because: (1) Defendant is a Foreign Corporation registered to do business in Clark County Nevada; (2) The slip and fall accident between the parties occurred in Clark County Nevada; and (3) Plaintiff's Demand for relief is in excess of \$15,000.00.

COMES NOW Plaintiff, OSCAR POLIDORO, by and through his attorney of record, ALLEN A. CAP, ESQ., of the Law Office of CAP & KUDLER, and for his causes of action against the Defendants, and each of them, alleges as follows:

I.

At all times herein mentioned, Plaintiff, OSCAR POLIDORO, was a resident of Las Vegas, Clark County, State of Nevada.

II.

At all times mentioned herein, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., a foreign corporation, and authorized to do business in the State of Nevada.

/ / /

III.

1 The true names and capacities of the Defendants designated herein as DOE or ROE  
2 CORPORATIONS are presently unknown to Plaintiff at this time who, therefore, sues said  
3 Defendants by such fictitious names and when their true names and capacities are ascertained,  
4 Plaintiff will amend her Complaint accordingly to insert same herein. Doe or Roe Corporations are  
5 alleged to be the parent, subsidiary or affiliated companies of Defendant, SMITH'S FOOD & DRUG  
6 CENTERS, INC., or any independent supplier of Defendant, SMITH'S FOOD & DRUG CENTERS,  
7 INC., who supplied cordwood to Defendant, SMITH'S FOOD & DRUG CENTERS, INC., that  
8 contributed to Plaintiff's accident that is described herein.

9 IV.

10 At all times mentioned herein, Defendants, and each of them, were in the possession and  
11 control of certain real property and premises located at 6130 W. Tropicana Ave., in Las Vegas, Clark  
12 County, Nevada, said premises commonly known as Smith's Food & Drug #351.

13 V.

14 That on or about the 8<sup>th</sup> of December, 2020, the Plaintiff was upon said real property and  
15 premises, as herein above referred to Smith's Food & Drug #351, at the invitation of and for business  
16 benefit to the Defendants, and each of them.

17 VI.

18 At said time and place, the Defendants, and each of them, negligently maintained and  
19 controlled said real property and premises and, further, negligently permitted a dangerous condition,  
20 not obvious or apparent to the Plaintiff, to exist thereon and further, did:

- 21 a. Negligently cause a dangerous condition to exist to wit: the firewood display  
22 adjacent, to the right of the right-front entrance of the store, to be in a dangerous  
23 condition without providing adequate ingress and egress, leaving the only path for  
24 retrieving firewood from the display over a cracked palate used to transport the  
25 firewood;
- 26 b. Negligently allow said dangerous condition to exist consisting of a broken palate in  
27 the area of the firewood display;
- 28

- c. Failure to remove the palate with cracked boards from the firewood display;
- d. Negligently failed to warn Plaintiff of said dangerous condition by placing signs notifying of the presence of said hazardous condition involving a cracked palate in the firewood display;
- e. Failure to inspect the display palate of firewood to determine it's structural integrity;
- f. Negligently allowed a broken palate to exist in the path traveled by the Plaintiff and other business invites to retrieve bundles of firewood;
- g. Negligently failed to inspect the firewood display palate for damage and broken boards that constituted a hazard to patrons;
- h. Failure to properly display firewood in a safe condition for selection and retrieval by patrons;
- i. Failure to properly instruct and train Defendant's employee who was assisting Plaintiff to retrieve and transport firewood to his vehicle on proper safety procedures;
- j. Negligently parking row of shopping carts next to the firewood display restricting patron ingress and egress to the display area;
- k. Failure to adequately display bundles of firewood so that patrons would have easy access for the selection and retrieval;
- l. Failure to remove the cracked and dangerous palate which created a hazard to patrons from the firewood display area of the store;
- m. Failure of Defendant's employee to warn Plaintiff of the cracked condition of the palate located in the firewood display;
- n. Failure to provide appropriate assistance to Plaintiff in selecting and transporting bundles of firewood to his vehicle.

## VII.

Prior to Plaintiff's accident, the dangerous condition of said premises was known by, or should have been known by, the Defendants, and each of them, in the exercise of reasonable care.

/ / /

## VIII.

As a proximate result of the aforesaid negligence of the Defendants, and each of them, Plaintiff, OSCAR POLIDORO, was injured while carrying firewood to his shopping cart and the display palate collapsed sending him to the floor, and thereby sustaining the injuries and damages as hereinafter set forth.

## IX.

That by reason of the premises and as a direct and proximate result thereof, Plaintiff, OSCAR POLIDORO, sustained injuries to his neck, back, right wrist, nose and right shoulder requiring surgical repair, all or some of which conditions may be permanent and disabling in nature, all to his general damage in a sum in excess of \$15,000.00.

## X.

That by reason of the premises and as a direct and proximate result of the aforementioned negligence of the Defendant, and each of them, Plaintiff, OSCAR POLIDORO, was required to and did receive medical and other treatment for his injuries received in an expense all to his damage in a sum in excess of \$15,000.00. That said services, care and treatment are continuing and shall continue in the future, all to his damage in a presently unascertainable amount, and Plaintiff will amend his Complaint accordingly when same shall be ascertained.

## XI.

That prior to the injuries complained of herein, Plaintiff, OSCAR POLIDORO, was an able-bodied person readily and gainfully employed and physically capable of engaging in all other activities for which he was otherwise suited.

## XII.

That Plaintiff, OSCAR POLIDORO, has retained the assistance of an attorney to represent him on his claims against Defendants, and each of them, and are therefore entitled to reasonable attorney's fees and costs.

/ / /

1 WHEREFORE, Plaintiff, expressly reserving his right to amend his Complaint prior to or  
2 at the time of trial of this action to insert those items of damages not yet fully ascertainable, prays  
3 judgment as follows:

4 1. For past and future general damages sustained by Plaintiff, OSCAR POLIDORO, in  
5 an amount in excess of \$15,000.00;

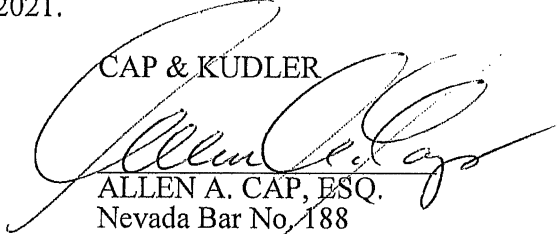
6 2. For costs of past and future medical care and treatment and other expenses incurred  
7 thereto when same are fully ascertained;

8 3. For costs of suit incurred herein; and

9 4. For such other and further relief as the Court may deem just and proper in the  
10 premises.

11 DATED this 23<sup>d</sup> day of September, 2021.

12 CAP & KUDLER

13  
14   
15 ALLEN A. CAP, ESQ.

16 Nevada Bar No. 188

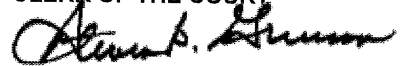
17 3202 W. Charleston Boulevard

18 Las Vegas, Nevada 89102

19 Attorney for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

P SER  
CAP & KUDLER, P.C.  
3202 W CHARLESTON BLVD  
LAS VEGAS, NV 89102  
(702) 878-8778

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11/4/2021 4:13 PM  
Steven D. Grierson  
CLERK OF THE COURT



DISTRICT COURT  
CLARK COUNTY, NEVADA

OSCAR POLIDORO  
Plaintiff

vs

SMITH'S FOOD & DRUG CENTERS, INC.  
Defendant

Case Number: A-21-841568-C

Dept:

**PROOF OF SERVICE**

DUSTIN GROSS, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age and not a party to nor interested in the proceeding in which this statement is made.

Affiant received a copy of the:  
**SUMMONS; COMPLAINT**

I served the same on **10/15/2021 at 2:09 PM** to:

Defendant **SMITH'S FOOD & DRUG CENTERS, INC., A FOREIGN CORPORATION, BY SERVING CORPORATION SERVICE COMPANY, REGISTERED AGENT**

by leaving the copies with or in the presence of **KRIS OSBORN, CORPORATE SPECIALIST**, at 112 N CURRY ST, CARSON CITY, NV 89703, pursuant to **NRS 14.020**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

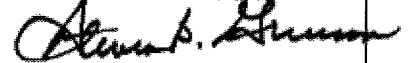
Executed: Tuesday, October 19, 2021



DUSTIN GROSS, R-2020-09090  
Battle Born Process Service, NV PILB LIC  
#1876  
3710 Grant Drive, Ste. L  
Reno, NV 89509  
775-507-7188

P-1952948.01 Client File # POLIDORO, OSCAR

Electronically Filed  
11/4/2021 2:08 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ANSC**  
2 JERRY S. BUSBY  
3 Nevada Bar #001107  
4 COOPER LEVENSON, P.A.  
5 3016 West Charleston Boulevard - #195  
6 Las Vegas, NV 89102  
7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 [jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
10 Attorneys for Defendant  
11 SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 OSCAR POLIDORO,  
10 Plaintiff,

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC.,  
13 a foreign corporation; and DOES I-V and ROE  
14 CORPORATIONS I-V,

15 Defendants.

CASE NO.: A-21-841568-C  
DEPT. NO.: XXXI

**DEFENDANT SMITH'S FOOD & DRUG  
CENTERS, INC.'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

16 COMES NOW, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., by and through its  
17 attorney of record, JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A., and hereby  
18 answers Plaintiff's Complaint on file herein as follows:

19 **I.**

20 This answering Defendant states that it does not have sufficient knowledge or information upon  
21 which to base a belief as to the truth of the allegations contained in Paragraphs I, III, V, IX and XI of  
22 Plaintiff's Complaint and upon said ground, denies each and every allegation contained therein.

23 **II.**

24 This answering Defendant admits the allegations contained in Paragraph II of Plaintiff's  
25 Complaint.

26 **III.**

27 In response to Paragraph IV of Plaintiff's Complaint, this answering Defendant admits that it  
28 was in possession and control of the SMITH'S store located at 6130 West Tropicana Avenue in Las



Vegas, Clark County, Nevada. This answering Defendant denies any remaining allegations contained in said Paragraph.

**IV.**

This answering Defendant denies each and every allegation contained in Paragraphs VI, VII, VIII, X and XII of Plaintiff's Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff did not use reasonable diligence to care for his injuries, thereby aggravating said injuries as a result. Therefore, Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

**SECOND AFFIRMATIVE DEFENSE**

At the time and place alleged in Plaintiff's Complaint, and for a period of time prior thereto, Plaintiff did not exercise ordinary care, caution, or prudence for the protection of his own safety, and injuries and damages complained of by Plaintiff in the Complaint, if any, were directly and proximately caused or contributed to by the fault, failure to act, carelessness, and negligence of Plaintiff, and therefore Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of his Complaint on file herein; for costs and disbursements incurred in this action; and for such other and further relief as to the Court may deem proper.

Dated this 4th day of November, 2021.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby  
Jerry S. Busby  
Nevada Bar No. 001107  
3016 West Charleston Boulevard - #195  
Las Vegas, NV 89102  
Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.

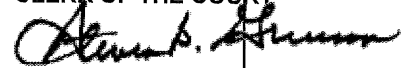
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 4th day of November, 2021, I did cause a true copy of the foregoing **DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Allen A. Cap, Esq.  
CAP & KUDLER  
3202 West Charleston Boulevard  
Las Vegas, NV 89102  
Attorneys for Plaintiff

By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

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11/9/2021 1:18 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ABREA**  
2 ALLEN A. CAP, ESQ.  
3 Nevada Bar No. 188  
4 CAP & KUDLER  
5 3202 W. Charleston Boulevard  
6 Las Vegas, Nevada 89102  
7 (702) 878-8778  
8 *Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 OSCAR POLIDORO,  
8 Plaintiff,

CASE NO.: A-21-841568-C  
DEPT. NO: XXXI

9 vs.

10 SMITH'S FOOD & DRUG CENTERS,  
11 INC., a foreign corporation; and DOES I-V  
12 and ROE CORPORATIONS I-V,  
13 Defendants.

**PETITION FOR EXEMPTION FROM ARBITRATION**

14 Plaintiff, OSCAR POLIDORO, hereby requests the above entitled matter be exempted from  
15 arbitration pursuant to Nevada Arbitration Rules 3 and 5, as this case:

- 16 1. \_\_\_\_\_ presents a significant issue of public policy;
- 17 2. X involves an amount in issue in excess of \$50,000,  
18 exclusive of interest and costs;
- 19 3. \_\_\_\_\_ presents unusual circumstances which constitute  
20 good cause for removal from the program.

21 A summary of the facts which supports my contention for exemption is as follows:

22 That on or about the 8<sup>th</sup> day of December, 2020, in Las Vegas, Clark County, Nevada,  
23 Plaintiff, OSCAR POLIDORO, was grocery shopping at Smith's Food & Drug #351 when he was  
24 injured while carrying firewood to his shopping cart and a board on the display palate collapsed  
25 sending him to the floor.

OSCAR POLIDORO'S medical specials are itemized as follows:

MEDICAL PROVIDER	TOTAL CHARGES
Dr. William Leavitt (DOS: 12/10/2020 to 05/04/2021)	\$8,482.00
SimonMed (DOS: 01/08/2021)	\$1,786.50
Intermountain Health Care (DOS: 01/21/2021)	\$277.00
Knee and Shoulder Institute (DOS: 03/01/2021 to 06/18/2021)	\$16,861.00
Surgical Arts Center (DOS: 03/11/2021)	\$24,882.00
Walgreens Pharmacy (DOS: 03/11/2021 to 05/11/2021)	\$75.57
<b>TOTAL MEDICAL SPECIALS</b>	<b>\$52,364.07</b>

Mr. Polidoro's damages and medical specials exceed the \$50,000.00 cap for the mandatory arbitration program. Mr. Polidoro had shoulder surgery on 3/11/2021 at the Surgical Arts Center.

Therefore, counsel requests this matter be exempted from the program.

I hereby certify pursuant to N.R.C.P. 11 this case to be within the exemption(s) marked above and am aware of the sanctions which may be imposed against any attorney or party who without good cause or justification attempts to remove a case from the arbitration program.

DATED this 9<sup>th</sup> day of November, 2021.

CAP & KUDLER



ALLEN A. CAP, ESQ.  
Nevada Bar No. 188  
3202 W. Charleston Boulevard  
Las Vegas, Nevada 89102  
*Attorney for Plaintiff*

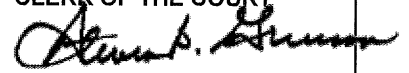
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of CAP & KUDLER and on the 9<sup>th</sup> day of November, 2021, I served a true and correct copy of the foregoing **PETITION FOR EXEMPTION FROM ARBITRATION** pursuant to NRCP 5(b), by electronic service, to the following:

Jerry S. Busby, Esq.  
COOPER LEVENSON, P.A.  
3016 West Charleston Boulevard - #195  
Las Vegas, NV 89102  
(702) 366-1125  
*Attorneys for Defendant*  
*Smith's Food & Drug Centers, Inc.*

  
\_\_\_\_\_  
An Employee of **CAP & KUDLER**

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11/23/2021 3:44 PM  
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CLERK OF THE COURT



CDRG

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

Oscar Polidoro, Plaintiff(s)

vs.

CASE NO: A-21-841568-C  
DEPT. NO: XXXI

Smith's Food & Drug Centers, Inc.,

Defendant(s)

**COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION**

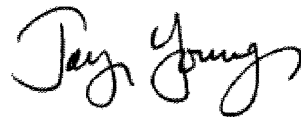
REQUEST FOR EXEMPTION FILED ON: November 09, 2021

EXEMPTION FILED BY: Plaintiff OPPOSITION: No

**DECISION**

Having reviewed the Request for Exemption, and all related pleadings, the Request for Exemption is hereby GRANTED.

DATED this 23rd of November, 2021.



ADR COMMISSIONER

**NOTICE**

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Clerk of Court and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail. **Pursuant to NEFCR Rule 9(f)(2) an additional 3 days is not added to the time if served electronically (via e-service).**

**A copy of the foregoing Commissioner's Decision on Request for Exemption was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program on the date of e-filing.**

*If indicated below*, a copy of the foregoing Commissioner's Decision on Request for Exemption was also:

☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es) on \_\_\_\_\_, 2021.

/s/ Loretta Walker  
ADR COMMISSIONER'S DESIGNEE